

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

03-OLR-17

Gary J. Schmidt
Attorney at Law

Attorney Gary J. Schmidt, Respondent, of Appleton, Wisconsin, was appointed by the State Public Defender (SPD) to represent a man on multiple criminal charges. The man plead guilty, was sentenced on May 6, 2002, and informed Schmidt that he wished to appeal his conviction. On May 7, 2002 Schmidt filed a Notice of Right to Seek Postconviction Relief, but did not subsequently file the statutorily required Notice of Intent to Seek Postconviction Relief.

On October 31, 2002 the Court of Appeals received from the man a pro se Motion for an Extension of Time for Filing the Defendant's Notice of Intent to Pursue Postconviction Relief. As basis for the extension the man cited his attorney's failure to file an appeal and the man's unsuccessful attempts to contact his attorney.

On November 13, 2002 the Court ordered Schmidt to inform the court why no notice of intent had been filed. The Court ordered a response by November 25, 2002, but Schmidt did not respond to the Court's order. On January 14, 2003, the Court issued an order stating that the information before it suggested that Schmidt thought that the Notice of Right that was filed constituted the Notice of Intent. The Court also stated that it expected the SPD to monitor Schmidt's performance in light of his failure to comply with the Court's order and his failure to reply to the Court's inquiries. The Court then

extended the time for filing the Notice of Intent. On January 14, 2003, Schmidt filed the Notice of Intent, citing his lack of timely filing as an oversight on his part.

By failing to timely file the Notice of Intent to Seek Postconviction Relief Schmidt violated SCR 20:1.3, which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

By failing to respond to the Court’s order for information on the status of the man’s case Schmidt violated SCR 20:3.4(c), which states, “A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.”

In an unrelated matter, Schmidt was appointed by the SPD to represent a man on a charge of Operating While Intoxicated, 6th offense. The man was sentenced on January 22, 2002, and although he informed Schmidt that he wished to appeal his conviction, Schmidt failed to file the Notice of Intent to Pursue Postconviction Relief.

On April 5, 2002 the man wrote Schmidt inquiring about the status of the appeal. Schmidt did not answer the letter. It is undisputed that Schmidt was aware the man wished to pursue an appeal. From January 24, 2002 until February 2003, when Schmidt filed the Notice of Intent, however, he had no contact with the man advising him of the status of the appeal.

On December 23, 2002 the Court of Appeals received from the man a pro se Motion for an Extension of Time for Filing the Defendant’s Notice of Intent to Pursue Postconviction Relief. The man cited Schmidt’s failure to contact him about the status of the appeal as the basis for the extension.

On January 2, 2003 the Court of Appeals ordered Schmidt to inform the court why no Notice of Intent had been filed. Schmidt was ordered to respond by January 12, 2003, but filed no response by that date.

On February 4, 2003 the Court issued another order again ordering Schmidt to provide information as to the man's intent to pursue postconviction relief. The Court's order stated, "This is the second time since November 13, 2002 that Attorney Schmidt has failed to comply with this court's orders. Compliance with our orders is not optional. Unless this court receives a response from Attorney Schmidt by February 13, 2003, we will impose one or more of the following sanctions: an order to show cause why he is not in contempt, financial penalties under WIS. STAT. RULE 809.83(2) and/or referral to the Office of Lawyer Regulation."

On February 7, 2003 Schmidt filed a Motion for an Extension of Time for Filing the Defendant's Notice of Intent to Pursue Postconviction Relief, as well as a Notice of Intent to Pursue Postconviction Relief. On February 11, 2003 the Court extended the time for filing the Notice of Intent.

By failing to timely file the Notice of Intent to Seek Postconviction Relief Schmidt violated SCR 20:1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

By failing to respond to the man's reasonable request for information Schmidt violated SCR 20:1.4(a), which states, "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

By failing to respond to the Court's order for information on the status of the man's case Schmidt violated SCR 20:3.4(c), which states, "A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."

In an unrelated matter, Schmidt was appointed by the SPD to represent a man in a civil contempt action involving a paternity case. A contempt hearing was held on July 23, 2001 and the man was ordered to serve jail time. On July 27, 2001 Schmidt met with the man in jail and the man informed Schmidt that he wished to appeal the sentence. Schmidt filed the Notice of Intent to Pursue Postconviction Relief on September 5, 2001, which was more than 20-days from the July 23, 2001 entry of judgment date and therefore not timely.

On September 18, 2001 and October 15, 2001 the SPD notified Schmidt that his filing was not timely and that the SPD could not appoint counsel for the appeal unless Schmidt filed a Motion to Extend the Time for Filing a Notice of Intent with the Court of Appeals. Schmidt did not respond to either of the SPDs letters and did not file a Motion to Extend. In a November 15, 2001 letter the SPD notified Schmidt that as he had still not filed a Motion to Extend the SPD could not appoint appellate counsel on the man's matter and was closing its file. The man's appeal rights were never reinstated.

As reason for his failure to timely file the Notice of Intent, Schmidt stated that he was confused as to the time limits for filing an appeal in a civil contempt case. Schmidt stated that after consulting with the SPD on how to file such an appeal he believed that the 45-day time limit for filing a civil appeal was applicable and not the 20-day time limit applicable to criminal cases.

By failing to timely file the Notice of Intent to Seek Postconviction Relief Schmidt violated SCR 20:1.1, which states, “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

By failing to file a Motion to Extend the Time for Filing Schmidt violated SCR 20:1.3, which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

In accordance with SCR 22.09(3), Attorney Gary J. Schmidt is hereby publicly reprimanded.

Dated this 12th day of December, 2003.

SUPREME COURT OF WISCONSIN

/s/ Gene B. Radcliffe
Gene B. Radcliffe, Referee